

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

§ 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?

No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

[66 FR 41950, Aug. 9, 2001]

§ 40.29 Where is other information on employer responsibilities found in this regulation?

You can find other information on the responsibilities of employers in the following sections of this part:

- § 40.3—Definition.
- § 40.35—Information about DERs that employers must provide collectors.
- § 40.45—Modifying CCFs, Use of foreign-language CCFs.
- § 40.47—Use of non-Federal forms for DOT tests or Federal CCFs for non-DOT tests.
- § 40.67—Requirements for direct observation.
- §§ 40.103–40.105—Blind specimen requirements.
- § 40.173—Responsibility to ensure test of split specimen.

- § 40.193—Action in “shy bladder” situations.
- § 40.197—Actions following report of a dilute specimen.
- § 40.207—Actions following a report of a cancelled drug test.
- § 40.209—Actions following and consequences of non-fatal flaws in drug tests.
- § 40.215—Information about DERs that employers must provide BATs and STTs.
- § 40.225—Modifying ATF; use of foreign-language ATFs.
- § 40.227—Use of non-DOT forms for DOT tests or DOT ATFs for non-DOT tests.
- § 40.235 (c) and (d)—responsibility to follow instructions for ASDs.
- § 40.255 (b)—receipt and storage of alcohol test information.
- § 40.265 (c)–(e)—actions in “shy lung” situations.
- § 40.267—Cancellation of alcohol tests.
- § 40.271—Actions in “correctable flaw” situations in alcohol tests.
- § 40.273—Actions following cancelled tests in alcohol tests.
- § 40.275—Actions in “non-fatal flaw” situations in alcohol tests.
- §§ 40.287–40.289—Responsibilities concerning SAP services.
- §§ 40.295–40.297—Prohibition on seeking second SAP evaluation or changing SAP recommendation.
- § 40.303—Responsibilities concerning aftercare recommendations.
- § 40.305—Responsibilities concerning return-to-duty decision.
- § 40.309—Responsibilities concerning follow-up tests.
- § 40.321—General confidentiality requirement.
- § 40.323—Release of confidential information in litigation.
- § 40.331—Other circumstances for the release of confidential information.
- § 40.333—Record retention requirements.
- § 40.345—Choice of who reports drug testing information to employers.

[65 FR 79526, Dec. 19, 2000. Redesignated at 66 FR 41950, Aug. 9, 2001.]

Subpart C—Urine Collection Personnel

§ 40.31 Who may collect urine specimens for DOT drug testing?

(a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.

(b) A collector must meet training requirements of § 40.33.

(c) As the immediate supervisor of an employee being tested, you may not

§ 40.33

act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.

(d) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (*e.g.*, as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

§ 40.33 What training requirements must a collector meet?

To be permitted to act as a collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) *Basic information.* You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections, and you must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site (<http://www.dot.gov/ost/dapc>).

(b) *Qualification training.* You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;

(2) “Problem” collections (*e.g.*, situations like “shy bladder” and attempts to tamper with a specimen);

(3) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(4) The collector’s responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;

(c) *Initial Proficiency Demonstration.* Following your completion of qualification training under paragraph (b) of

49 CFR Subtitle A (10–1–01 Edition)

this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.

(1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

(i) Regularly conducting DOT drug test collections for a period of at least a year;

(ii) Conducting collector training under this part for a year; or

(iii) Successfully completing a “train the trainer” course.

(d) *Schedule for qualification training and initial proficiency demonstration.* The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a collector before August 1, 2001, and you have already met the requirements of paragraphs (b) and (c) of this section, you do not have to meet them again.

(2) If you became a collector before August 1, 2001, and have yet to meet the requirements of paragraphs (b) and (c) of this section, you must do so no later than January 31, 2003.

(3) If you become a collector on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.